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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 454 (KPF)

5 DARRELL HUDSON,

6 Defendant.

Sentencing

7 -----x

8 New York, N.Y.  
9 November 6, 2019  
3:04 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
Southern District of New York

17 BY: FRANK J. BALSAMELLO

Assistant United States Attorney

18 MOSKOWITZ & BOOK, LLP

Attorneys for Defendant

19 BY: AVRAHAM C. MOSKOWITZ, ESQ.

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record, beginning with the government.

MR. BALSAMELLO: Good afternoon, your Honor. Frank Balsamello for the United States.

THE COURT: Good afternoon. Thank you.

MR. MOSKOWITZ: Good afternoon, your Honor. Avi Moskowitz on behalf of Mr. Hudson, who's seated to my left.

THE COURT: Sir, good afternoon to you.

Mr. Hudson, good afternoon to you.

THE DEFENDANT: Good afternoon.

THE COURT: Okay. Thank you very much.

Let me please begin by making sure I have the materials that I should have. I have a presentence investigation report that is dated August 28th of 2019; I have a defense sentencing submission that is dated October 23rd of 2019, with letters from supporters; I have a government sentencing submission that is dated October 30th of 2019; and I have a supplemental defense submission that is dated November 4th.

Mr. Moskowitz, should I have anything else on behalf of your client?

MR. MOSKOWITZ: No, your Honor.

THE COURT: Thank you.

Mr. Balsamello, anything else on behalf of the

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1 government?

2 MR. BALSAMELLO: No, your Honor.

3 THE COURT: Mr. Balsamello, has the government had a  
4 sufficient opportunity, under Federal Rule of Criminal  
5 Procedure 32, to review the presentence investigation report in  
6 this case?

7 MR. BALSAMELLO: We have.

8 THE COURT: Do you have any objections to its  
9 contents?

10 MR. BALSAMELLO: We don't.

11 THE COURT: It does recite a different guidelines  
12 calculation, am I correct?

13 MR. BALSAMELLO: It does.

14 THE COURT: And I understood from your sentencing  
15 submission that you agree with that guidelines calculation.

16 MR. BALSAMELLO: We accept their criminal history  
17 calculation as III as opposed to IV.

18 THE COURT: Okay. Thank you very much, sir.

19 Mr. Moskowitz, similar questions. Have you and has  
20 Mr. Hudson had a sufficient opportunity, under Federal Rule of  
21 Criminal Procedure 32, to review the presentence investigation  
22 report in this case?

23 MR. MOSKOWITZ: Yes, your Honor.

24 THE COURT: Do you have any objections to its  
25 contents?

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1 MR. MOSKOWITZ: No, your Honor.

2 THE COURT: I am imagining that you agree with the  
3 government that the probation office has accurately or perhaps  
4 more accurately calculated your client's criminal history  
5 category.

6 MR. MOSKOWITZ: That's correct.

7 THE COURT: As well, sir, have you and your client had  
8 an opportunity to review the conditions that are contained at  
9 the back of the presentence investigation report, beginning at  
10 page 20? I call them and you will know them as the mandatory,  
11 standard, and special conditions of supervised release.

12 MR. MOSKOWITZ: Yes, your Honor, we've reviewed the  
13 entire report.

14 THE COURT: Do you have any objection to any of the  
15 proposed special conditions?

16 MR. MOSKOWITZ: No, your Honor.

17 THE COURT: I will ask you and I will ask your client,  
18 are you comfortable, sir, if I refer to them collectively as  
19 the mandatory, standard, and special conditions of supervised  
20 release without reading them individually into the record?

21 THE DEFENDANT: Yes. Yes.

22 THE COURT: I think I understood the "yes" from you  
23 and your client to mean yes, you reviewed these things and you  
24 don't need me to read them word for word into the record.

25 MR. MOSKOWITZ: That is correct, your Honor.

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1 THE COURT: That is fine. I can tell by the grins on  
2 your faces that you understood what I was saying.

3 Mr. Balsamello, does the government seek restitution  
4 or forfeiture in this case?

5 MR. BALSAMELLO: No, your Honor.

6 THE COURT: Then lest I forget to do so, I will adopt  
7 the presentence investigation report, the factual statements  
8 that are contained in it and the guidelines calculations that  
9 are contained in it as well.

10 Mr. Balsamello, a couple of housekeeping matters,  
11 please, sir.

12 I'm a little bit confused, but I think it can be  
13 remedied. I believe the government states in its letter to me  
14 that Mr. Hudson has 22 arrests, or -- yes, more than 20 arrests  
15 and eight convictions, distinguishing him from Mr. Padilla, who  
16 had 18 arrests and four convictions. I don't know that all the  
17 arrests are contained in the presentence investigation report.  
18 If they are, please let me know that they are, and if they are  
19 not, could you let me know where that number came from.

20 MR. BALSAMELLO: They certainly are all not in the  
21 presentence report. Probation never includes arrests that are  
22 sealed or for whatever other reason don't appear in the rap  
23 sheet that probation can access. So we have unsealed records.

24 THE COURT: One moment, please, sir. Let's pause for  
25 a moment, let folks sit down.

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1 Thank you.

2 I am understanding from the hand gestures I am  
3 receiving that the folks who are here are here to support  
4 Mr. Hudson this afternoon. They are certainly welcome.

5 AUDIENCE MEMBERS: Thank you.

6 THE COURT: Mr. Hudson, you see you have people here  
7 for you?

8 THE DEFENDANT: Yes.

9 THE COURT: Thank you.

10 Mr. Balsamello, I'm going to let you continue, please,  
11 and if you need to restart, I certainly understand.

12 MR. BALSAMELLO: No, your Honor.

13 So the probation office goes by the rap sheet that  
14 they have. We have unsealed records from the New York City  
15 Police Department that list all arrests regardless of whether  
16 they have been sealed. Sometimes cases are sealed because they  
17 result in a conditional discharge, and if the defendant  
18 completes the period during which he's expected not to commit  
19 new crimes, he is allowed to withdraw his plea or things like  
20 that. There are various reasons the state may seal or dispose  
21 of the case. It may have been dismissed outright.

22 THE COURT: But let me pause for a moment, just to  
23 push back. Might one reason for the dismissal and sealing of  
24 the case be a recognition that perhaps they got the wrong man  
25 or that there was something infirm with the arrest itself?

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1 What I'm going to -- and I'm sure you'll figure this out on  
2 your own -- is that someone who's been arrested 20 times with  
3 no convictions is arguably differently situated than someone  
4 who's been arrested 20 times with 20 convictions.

5 MR. BALSAMELLO: Certainly.

6 THE COURT: And so I don't know what you wish me to  
7 make of arrests that are not contained in the presentence  
8 investigation report and that did not result in any criminal  
9 justice sentence.

10 MR. BALSAMELLO: I think there are two things I would  
11 suggest your Honor to take note of. First is just the  
12 consistency of law enforcement contact, and regardless of  
13 whether he had committed the crime for which he was arrested on  
14 that 20th arrest, he nevertheless, having been put in handcuffs  
15 20 times, continued to commit criminal activity in the same  
16 community where he had been arrested so many times before. So  
17 simply the number of contacts with law enforcement has not  
18 acted as a deterrent, regardless of whether the conduct  
19 underlying those arrests -- whether the arrests were valid,  
20 whatever they were for, the mere occurrence of the arrests and  
21 detention on some kind of charge had no effect on Mr. Hudson in  
22 terms of deterrence. That's one thing I would suggest your  
23 Honor could draw from it.

24 The second thing, and actually, the primary reason, or  
25 a primary reason that I cited it here is that I believe

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1 Mr. Moskowitz had compared Mr. Hudson to Mr. Padilla in terms  
2 of their arrests or convictions. Mr. Moskowitz, probably  
3 looking at our sentencing submission or maybe the defense  
4 sentencing submission, and he made a comparison between the  
5 two, and so I was highlighting the difference. To the same  
6 degree that 12 of Mr. Hudson's arrests didn't result in  
7 conviction, 14 of Mr. Padilla's didn't. I'm simply  
8 demonstrating in that comparison, in that statement, at least,  
9 that if we're looking at data points with those two defendants  
10 in the case, Mr. Hudson has been both arrested and convicted  
11 more times than Mr. Padilla.

12 THE COURT: I see. Is there a reason -- well, there  
13 is a reason, of course. Mr. Padilla had a larger quantity  
14 attributed to him than Mr. Hudson, am I correct?

15 MR. BALSAMELLO: Yes.

16 THE COURT: And yet I thought I understood from your  
17 submission that in part Mr. Hudson was a supplier to  
18 Mr. Padilla. Am I also correct?

19 MR. BALSAMELLO: Yes.

20 THE COURT: Okay.

21 MR. BALSAMELLO: I want to make sure the word  
22 "supplier" is sort of understood in the context of the way  
23 these guys operated. He was not supplying Mr. Padilla kilos at  
24 a time. We're not talking about sort of trafficker-level  
25 duffel bags full of drugs here, but he would be supplying --



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1 they often did flip, where someone who was effectively a  
2 customer would get enough product or bring a customer to get  
3 his own and serve the customer that he was bringing to, in this  
4 case, Mr. Hudson. So we're talking still about street-level  
5 quantities where Mr. Padilla was sort of facilitating further  
6 sales or getting from Mr. Hudson to make his own sales of  
7 street-level quantities.

8 THE COURT: And that's my question. I want to make  
9 sure I understand precisely what you mean when you use the term  
10 "flips." And you may have already told me all that I need to  
11 know about it, but I am going to ask you please to repeat  
12 yourself just so that there's no misapprehension on my part as  
13 to what you mean when you use the term.

14 MR. BALSAMELLO: This is what we understand from the  
15 wiretaps in the case. We're listening to calls, and from the  
16 way the cooperators explain them, and it's not -- I don't know  
17 that there's sort of a fixed, rigid way that it was done or if  
18 it was sort of a term used that could apply to a couple of  
19 slight variances. But if Mr. Padilla wanted product for  
20 himself to use but didn't have the full amount to pay for what  
21 he wanted for himself, and had another customer, knew someone  
22 else who wanted also, he could facilitate that person getting  
23 from whoever Mr. Padilla was going to get it from at that  
24 time -- in some instances it was Mr. Hudson -- and by  
25 facilitating an additional sale, he would be getting credit,

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1 he'd be paying less for his own product. I think sometimes  
2 that was done with actually bringing a customer to the person  
3 who was selling. I think it could also have been accomplished  
4 by more or less consignment-type relationship between the  
5 person who was giving the flip and the person receiving it. So  
6 Mr. Padilla could have received the product up front or paid  
7 half for it and made his money back when he was reselling to  
8 someone else. It accomplishes the same thing as getting  
9 product on consignment. But we're talking about I think more  
10 transaction-by-transaction street-level quantities as opposed  
11 to a consignment relationship, where someone's getting 10 grams  
12 and then pays back a thousand dollars later. Here I think  
13 we're talking more a few bags at a time and flipping them to  
14 another customer.

15 THE COURT: Excuse the analogy, sir.

16 MR. BALSAMELLO: Sure.

17 THE COURT: If I refer someone to my chiropractor, my  
18 next adjustment is discounted or may even be free. Is that  
19 what you're talking about hear? By bringing another customer,  
20 the charge that you yourself would be assessed is lessened?

21 MR. BALSAMELLO: I think so. From the calls, from the  
22 way they talked about them, that sounds like what may have been  
23 occurring. We also have spoken to a witness who I think used  
24 the term also to refer to -- it doesn't quite work with a  
25 chiropractor service, but if Mr. Hudson fronted work, fronted

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1 product to Mr. Padilla --

2 THE COURT: Yes.

3 MR. BALSAMELLO: -- at a discount, and then he was  
4 able to resell it to make his money back. So I think there are  
5 different ways. There may have been a slight variance in terms  
6 of what it meant. At the end of the day, the material contours  
7 here are that Mr. Hudson was selling to Mr. Padilla and  
8 providing product to Mr. Padilla, either directly to be given  
9 to another customer or to another customer who was coming with  
10 Mr. Padilla.

11 THE COURT: I see. Okay.

12 MR. BALSAMELLO: I will note also that part of the  
13 difference in the drug weight accounts for the duration, and  
14 there were a number of convictions for Mr. Padilla dating back  
15 I think earlier than the closest relevant conduct or the most  
16 distant relevant conduct for Mr. Hudson. Mr. Padilla had older  
17 relevant conduct. So we were looking at an aggregating weight  
18 over a longer period of time for Mr. Padilla. In terms of the  
19 day-to-day, the difference in weight was not intended to  
20 reflect the difference in their day-to-day within the  
21 conspiracy period specifically. As noted, just in terms of the  
22 number of buys we had and the wire intercepts, there's no  
23 indication that Padilla was moving more product than Mr. Hudson  
24 was during those years.

25 THE COURT: But it seems there was a bit of a tradeoff

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1 because Mr. Padilla had a higher quantity but a lower criminal  
2 history, because were the arrests folded in or considered  
3 relevant conduct to the case?

4 MR. BALSAMELLO: Correct. And that's why the  
5 weight -- under historical arrests like that that we deem  
6 relevant, the obvious part of that is then acknowledging the  
7 fact that he was engaged in drug sales in the same course of  
8 conduct dating back that far, and so the weight is obviously  
9 increased as part of that.

10 THE COURT: Okay. All right. One moment, please,  
11 sir.

12 MR. BALSAMELLO: Yes.

13 THE COURT: Mr. Balsamello, I'll hear you now on  
14 sentencing. And again, because we're still relatively new into  
15 the sentencings in this case, I want to make sure I understand  
16 the government's position as to Mr. Hudson's significance, his  
17 criticality to the charged conspiracy, any role that he might  
18 have. I do see a criminal history that includes episodes of  
19 violence and episodes of possession of a weapon, which is, of  
20 course, a cause for concern to me. I did not understand that  
21 there was any violence by Mr. Hudson or even a threat of  
22 violence in the charged conspiracy. Separate from that,  
23 anything else you'd like me to know. Thank you.

24 MR. BALSAMELLO: Thank you, your Honor.

25 So I'll start with I think, generally speaking, about

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1 the seriousness of the conduct, and I'll address some of the  
2 questions you just asked in that context.

3 I believe when we were here with Mr. Padilla, your  
4 Honor asked a very similar question about sort of whether  
5 anything can be drawn from the ordering of the defendants on  
6 the indictment and how do they fall here. And I believe my  
7 answer then was that below Mr. Nelson, Mr. Crooms, and  
8 Mr. Corley, they could have been shuffled in a lot of different  
9 ways. They are more or less the dealers who were selling those  
10 three individuals' products. Mr. Nelson I think at times  
11 supplied Mr. Crooms and Mr. Corley, and Mr. Corley and  
12 Mr. Crooms then supplied other people below them. Mr. Nelson  
13 also sometimes directly supplied people who were -- to all of  
14 them. Mr. Hudson was one of the dealers there. He was selling  
15 day in, day out, I think as indicated by the fact that in the  
16 course of this investigation alone, he made 18 sales to an  
17 undercover officer or a confidential informant, so whenever he  
18 was looked for by someone either with law enforcement or acting  
19 on law enforcement's behalf to sell product, he did so. He had  
20 crack products. He also sold -- I believe in one or two of the  
21 transactions there was a quantity of heroin that was sold. So  
22 he was selling multiple drugs, and he was doing so routinely.  
23 That was a means of making money, day in, day out, for  
24 Mr. Hudson. And the effect that that has on the community, it  
25 sounds -- I know we discussed this at prior sentencings as

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1 well. People below the supplier level, even the street-level  
2 dealers who may not be, you know, making an enormous fortune  
3 from the activity, have an incredibly harmful effect on this  
4 community. We're talking about apartment buildings that are  
5 not doomed based on where they are or how they're constructed.  
6 These buildings that we call "projects" and then just sort of  
7 assign a label, as if whatever happens there happens because  
8 they are "the projects" or they're "the houses." It's almost  
9 talked about like, well, of course there's drug activity there.  
10 That's not an automatic thing. Mr. Hudson is one of the  
11 people, the other conspirators in this case are the people who  
12 park in the hallways of these buildings, who cook the products,  
13 who, day in and day out, when parents are taking their kids to  
14 school, when people are going to and from work -- and there are  
15 law-abiding people in these communities -- when those people  
16 are going about their lives, they're passing Mr. Hudson and  
17 other defendants in this case slinging drug products. And  
18 while Mr. Hudson is not, as part of this case, known to have  
19 engaged in drug-related violence -- your Honor is correct, we  
20 don't have a firearm enhancement here or any acts of  
21 violence -- the conspiracy itself and drug activity in the  
22 Lambert Houses generally has spawned a great deal of violence.  
23 And it is something that responsibility for always becomes so  
24 diffuse because everyone who deals, who doesn't personally  
25 perpetrate an act of violence, says, well, I wasn't the one

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1 with the gun, I didn't have anything to do with that, but the  
2 drug trade in these places, it's an economy, it's a market, and  
3 Mr. Hudson certainly was a part of that, and there have been  
4 shootings there, there has been significant violence there in  
5 recent years.

6 Mr. Hudson does have a significant criminal history.  
7 He does have eight convictions. Putting completely to the side  
8 arrests that didn't result in convictions, he has eight  
9 convictions. One of them was for a firearm in 2013. He was  
10 sentenced to a year. That obviously did not accomplish the  
11 goals of sentencing. He was not deterred from that. One of  
12 his more recent arrests resulted in a one-year conditional  
13 discharge. And one of the conditions, at least, that  
14 Mr. Hudson should have been abiding by to get that case  
15 discharged and sealed, as I believe it was, was that he not  
16 commit new crimes, and I believe during the year period while  
17 he was under that condition, he made 16 of the 18 controlled  
18 sales. So while already being sanctioned by courts, while  
19 already being caught by law enforcement for these things,  
20 Mr. Hudson kept doing it. Part of the issue is how many  
21 arrests and how many cases like this in the state just go on  
22 and on until someone gets here and then is facing what is, I  
23 completely acknowledge, a significantly longer guidelines  
24 sentence than any equivalent state case he has faced. But he  
25 has time and again faced these, faced state charges for drug

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1 offenses or a gun, and they haven't accomplished the goal.  
2 They haven't, apparently, left Mr. Hudson in a place where he  
3 has decided he will turn away from criminal activity. For that  
4 reason, we believe that there is a significant need here for  
5 specific deterrence and to promote respect for the law, and to  
6 punish Mr. Hudson and his co-conspirators for what they do in  
7 this community and the effect that the narcotics activity there  
8 has on the people who live there.

9 I'll also note that in cases like this, where there  
10 are multiple defendants from a relatively concentrated area,  
11 who everyone knows to be the drug dealers in the area, when  
12 they are taken in a federal case, people in the community know  
13 that. In another case, I have seen a text message from one  
14 defendant to another, or from one of the defendant's brothers  
15 to the defendant, with the press release from this case,  
16 saying, "The Feds are here, gettin' serious," something to that  
17 effect. There is a need for general deterrence; there's a need  
18 for people who, time after time after time, are caught in the  
19 state and end up with misdemeanors or conditional discharges  
20 and continue with these long-running drug conspiracies that  
21 when a case like this finally hits, the consequence comes with  
22 it. That is, we think, an important aspect of cases like this  
23 and that there is a general deterrent value of people  
24 recognizing that at some stage there will be a real sentence to  
25 face if they continue to get caught and continue to engage in



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1 the activity.

2 So under the guideline range that probation  
3 calculates, which is already quite a bit lower than the one  
4 that the parties stipulated to, but we accept that that is the  
5 range, 70 to 87 months, we believe that it is appropriate and  
6 warranted here, and necessary. Mr. Padilla received 66 months,  
7 and we believe that 70 to 87 is a range that very fairly and  
8 appropriately accounts for Mr. Hudson's conduct, his place  
9 relative to his co-defendants, and would accomplish the goals  
10 of sentencing.

11 THE COURT: But is it your view that in certain  
12 material respects Mr. Hudson and Mr. Padilla are similarly  
13 situated, or is it your view that by any metric Mr. Hudson is  
14 more culpable or deserves a greater punishment than  
15 Mr. Padilla?

16 MR. BALSAMELLO: I think they're similar only in the  
17 respect that they were street-level drug dealers. I think when  
18 you just categorize them that way, they fit that general bill.  
19 When you look at the extent of criminal history, different  
20 numbers of convictions, Mr. Hudson having one of them for a  
21 gun, he has double the number of prior convictions Mr. Padilla  
22 did, I think that fact alone speaks to a difference between  
23 them. I think the fact that Mr. Padilla was coming to  
24 Mr. Hudson at times for product speaks to a slight difference  
25 in their relationship. That's not to mitigate anything

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1 Mr. Padilla did.

2 THE COURT: No.

3 MR. BALSAMELLO: We argued for a guidelines sentence  
4 with him as well and believe that to be appropriate. But here,  
5 comparing the two of them, I know Mr. Moskowitz, in his view,  
6 argued that Mr. Hudson may actually be less culpable or  
7 deserving of a lower sentence, and the government certainly  
8 sees no basis for that. The only places where they can be  
9 distinguished is a way in favor of a greater sentence for  
10 Mr. Hudson.

11 THE COURT: Thank you very much.

12 MR. BALSAMELLO: Thank you.

13 THE COURT: Mr. Moskowitz, I'll hear from you now.

14 MR. MOSKOWITZ: Judge, I'm not going to even attempt  
15 to downplay the significance of drug dealing in the  
16 neighborhood. I accept what Mr. Balsamello says about the  
17 effect on the neighborhood. I think we can all agree with  
18 that.

19 The real issue here, Judge, is your Honor has to  
20 decide what is sufficient but not greater than necessary to  
21 accomplish the goals of sentencing set out in 3553(a). And 60  
22 months, five years, the mandatory minimum in this case, is a  
23 substantial sentence, and it is sufficient to accomplish the  
24 goals of sentencing.

25 As Mr. Balsamello correctly pointed out, Mr. Hudson

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1 has quite a number of arrests. I take exception, I will note,  
2 with drawing any real inference from law enforcement contact.  
3 Arrests are sealed for a lot of good reasons. When they are  
4 sealed but nonetheless require criminal history points,  
5 probation includes them; when they're, for example, juvenile  
6 offenses. When they do not require criminal history points,  
7 they're sealed and probation doesn't consider them. It usually  
8 means they're dismissed or there was an ACD or something like  
9 that. But no inference should properly be drawn from police  
10 contact. We certainly know that Mr. Hudson was living in a  
11 neighborhood during the period of time of stop and frisk, and  
12 police contact during that period of time certainly fell  
13 unfavorably heavily on minorities. And many of those arrests,  
14 as we know from Mr. Hudson's criminal history, were just  
15 dismissed and sealed. So I don't think your Honor should draw  
16 any inference at all from that.

17 With respect to his convictions, I would point out the  
18 most serious one, which is the possession of a weapon, for  
19 which he got one year, was eight years ago, at the age of 21.  
20 Mr. Hudson is now 30, and as I'm going to discuss with the  
21 Court, I think Mr. Hudson really has made substantial progress  
22 towards moving out of the life that he once had, and he's going  
23 to talk to you about that too in terms of what his plans are  
24 and what his hopes are. But as serious as it was, he did his  
25 time for it, and it was a substantial period of time ago. And

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1 so while clearly it is of concern, and any weapons possession  
2 is of concern, it was not accompanied by acts of violence,  
3 thankfully, and since that time, since 2011, there hasn't been  
4 a repeat, despite other, shall we say police contact, or even  
5 arrests and convictions.

6 The reality, Judge, is that Mr. Hudson is, in many  
7 respects, unexceptional in terms of the types of defendants  
8 that your Honor sees, or the court here sees in drug cases.  
9 He's a street-level drug dealer. I really believe that an  
10 attempt to call him a supplier when he's selling a couple of  
11 bags to somebody who then may sell one of those bags to  
12 somebody else so that he can pay for the drugs is a vast  
13 overstatement. Sell somebody four bags and he uses two to get  
14 the money to buy the four, that could hardly really be called a  
15 supplier.

16 But really, with respect to Mr. Hudson, while the  
17 organization had a lot of people in it and Mr. Hudson worked  
18 for it for a period of time, he was your basic street-level  
19 dealer. And for someone of that nature to get five years on a  
20 case is a lot of time. There's no other way to put it. Those  
21 of us who are in the business, who are in court dealing with  
22 these cases all the time, we kind of lose sometimes perspective  
23 on exactly how much, you know, time that is. Five years is a  
24 lot of time in somebody's life. It's at the moment, you know,  
25 20 percent of his life, almost 20 percent of his life. So it

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1 constitutes a severe sentence. It's much greater than anything  
2 he's ever had. And it is going to have a deterrent effect.  
3 And I submit to the Court that the extra ten months that would  
4 come at the bottom end of the guideline range is not going to  
5 make a difference in terms of deterrence for Mr. Hudson, nor is  
6 it going to have a significantly greater general deterrent  
7 effect. Nobody's going to say, boy, if I can get 60 months,  
8 I'll sell the drugs, but if I get 70 months, I'm not going to  
9 sell the drugs. That's not the type of calculation -- and  
10 nobody is going to think that a 60-month sentence is lenient  
11 but a 70-month sentence is severe or draconian, and that's not  
12 going to be the factor that's going to change somebody's mind  
13 in terms of, if you're sending a message to the public that  
14 we're not going to tolerate this behavior.

15 I think actually, to a certain extent, you know, when  
16 we talk about just punishment, certainly a five-year sentence  
17 for a street dealer is just punishment. Because it's viewed in  
18 the context of a conspiracy. Again, clearly recognizing if  
19 this were in the state situation, if this were a state case,  
20 this would be much less. Obviously it's not, and he's facing a  
21 mandatory minimum, and that is a substantial sentence.

22 Now it's interesting; in my discussions with  
23 Mr. Hudson and talking about his background and sitting and  
24 listening to him talk about his background in the context of  
25 the probation interview, it struck me he's had a very difficult

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1 upbringing, a mother who was not available, who had her own  
2 substance abuse problems, a father who was not available.

3 THE COURT: Could we pause to appreciate the very sad  
4 irony of that, that in watching the absence of his mother, he  
5 actually went into the very profession that caused her to be  
6 absent?

7 MR. MOSKOWITZ: Yes, Judge. I understand that. And  
8 it is tragic, and it is ironic in many respects. But you don't  
9 get there -- you don't think about it in that context. There's  
10 a lot of things that go on until you get to that point.  
11 Clearly there's a whole environment that one grows up with.  
12 And the point I was making, Judge, is that to me, when I heard  
13 Mr. Hudson's biography, it sounded sad, in fact tragic in many  
14 respects, and yet when Mr. Hudson wrote to the Court, he wrote  
15 to the Court about being raised by his grandparents and the  
16 love that he got from them and how wonderful that was. And  
17 yes, that shows a certain maturity on his part and a certain  
18 appreciation for things that he had. As tough as it was, it  
19 wasn't as tough, clearly, as many others who come into this  
20 courthouse, because he had people who cared for him. And now  
21 we're actually seeing that those who care for him are still  
22 around. His aunts are here. And in fact his father is here,  
23 which is a testament to him.

24 So Mr. Hudson, I think it takes a lot to understand  
25 that with all the difficulties that he had in his family life

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1 and in his personal life, yet he appreciates the fact that  
2 there were people who did care for him and tried their hardest.  
3 And clearly his grandparents, he was a little bit much for  
4 them, and it was very difficult for them to deal with him, and  
5 that has to do with his own issues. You know, Mr. Balsamello  
6 is correct. His ADHD and his depression or bipolar disorders,  
7 those aren't excuses for what he did, but what they do reflect  
8 is the difficulties that he had in his life that made it  
9 difficult for his grandparents to keep him under control and  
10 why, how he ended up out on the street where he ended up. And  
11 a lot of the poor judgment that comes from those disorders,  
12 untreated, help explain -- not justify, not excuse, but help  
13 explain how he ended up where he ended up. And it's been my  
14 experience that drug use -- and Mr. Hudson clearly had a  
15 substantial history of drug use, mostly marijuana and alcohol.  
16 Those go hand and hand with the type of psychological disorders  
17 that he had. People, young men particularly, with ADHD very  
18 often use marijuana and alcohol as self-medication because it  
19 helps calm them down. And that's certainly an issue that  
20 Mr. Hudson suffered from.

21 My relationship with Mr. Hudson, such that it is, it's  
22 a relatively short one, but my involvement with him, in my  
23 speaking to him, my meetings with him, indicate to me that he  
24 really is dedicated now to moving on from this. And I think  
25 his letter to the Court simply and straightforwardly tries to

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1 accomplish that, and Mr. Hudson I think is going to talk to  
2 that.

3 What is worth noting, because it's not always the case  
4 in these cases, is Mr. Hudson has managed to keep a clear  
5 disciplinary record. When I went to see him last, I'd actually  
6 got to see him not wearing his prison uniform but wearing his  
7 kitchen uniform, because he is a cook in the kitchen, and it is  
8 something that he is passionate about, something that I think  
9 he would like to go to work in when he gets out, and whatever  
10 sentence your Honor gives him, he's going to be, you know, 33,  
11 34 when he gets out, somewhere in that vicinity. He's gotten  
12 to the point where he's getting close to what we call aging  
13 out, which obviously you can always commit crimes, even later  
14 in life, but the statistics tell us that the older you get, the  
15 less likely you are to repeat, and Mr. Hudson I think really is  
16 committed to that.

17 He talks about his children. He certainly wants to be  
18 the type of father that he didn't have when he was growing up.  
19 And I really do believe he's ready to move on with his life.

20 So the real question, Judge, is, do the extra ten  
21 months really have to be imposed, or even more extra, a year?  
22 I know your Honor has a 17-month guideline range, but probation  
23 is recommending 70 months, so I'm looking at the differential  
24 between 60 and 70 as the playing field, so to speak, without,  
25 obviously, stepping on the Court's discretion.



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1           Is it necessary? Or is it greater than necessary? I  
2 think 60 months accomplishes the purposes of 3553(a), and I'd  
3 ask your Honor to impose a sentence of 60 months.

4           I would also include in that, given Mr. Hudson's  
5 substance abuse history, that he be designated to a facility  
6 where he at least has the opportunity, or where he could  
7 possibly get into an RDAP program, the residential drug  
8 treatment program. All the outpatient programs he's gone to  
9 have not quite accomplished it. I think this is a program that  
10 has been shown to be effective; certainly among the clients  
11 that I've had, many of them have had it and have managed to  
12 stay clean. So I think it is one of the programs at the BOP  
13 that is successful, and I'd ask the Court to include that in  
14 its recommendation, wherever he is designated.

15           THE COURT: Sir, before you sit down, in your  
16 submission to me there were discussions about things that  
17 Mr. Hudson was doing while incarcerated to perhaps better  
18 himself, to prepare for re-entry, however you'd like to look at  
19 it. And so one thing was his seeking and obtaining a position  
20 in the culinary arts, which is where he is very interested. I  
21 thought there was discussion as well about him studying for --

22           MR. MOSKOWITZ: Studying for his GED, yes.

23           THE COURT: Has he taken it?

24           THE DEFENDANT: No. Never got a chance to.

25           THE COURT: It is his intention to take it at some

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1 point.

2 MR. MOSKOWITZ: Yes.

3 THE COURT: I'm aware, and I know you're aware, that  
4 there aren't an enormous number of programs that one can take  
5 in either of the transitional facilities that would serve this  
6 courthouse. I didn't know if there were specific things he  
7 wanted me to know about courses he had taken or programs he had  
8 done or things of that nature.

9 MR. MOSKOWITZ: I think, Judge, his work history and  
10 the -- it was really interesting for me to see his  
11 relationship, just even with the COs at the MCC, as somebody  
12 who works in the kitchen. It is a responsible job. It is one  
13 that he is apparently quite good at, and one that everybody in  
14 the facility seems to know and associate with him. So I think  
15 that -- and it's one that requires him to be up very early and  
16 work quite long hours. So I think that has probably diminished  
17 his ability to be in some of the other programs that might  
18 otherwise have been available to him. I know that when I see  
19 him, he's normally quite exhausted from the work that he's been  
20 doing, so I think that he's made that decision that that was  
21 the most productive use of his time and it allowed him to do  
22 something that he liked, and one where I think he's hoping to  
23 have a future in when he gets out.

24 THE COURT: Thank you for letting me know. I'll let  
25 you get back to your client.

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1           Mr. Hudson, you are invited to speak to me if you want  
2 to. I do want to make clear at the outset that you're not  
3 under any obligation to speak with me at this time, and I have  
4 read the written submission that you gave to me. It was  
5 attached as an exhibit to your attorney's submission. But if  
6 at this time there's something you'd like to say to me, I'd be  
7 happy to hear from you. I'd just ask this, sir. Given this  
8 courtroom, I'll ask you to take the microphone that's to your  
9 left, or maybe to your right, bring it a little bit closer to  
10 you, and if you could please speak slower and louder than you  
11 think you need to so we all can hear you. Thank you, sir.

12           THE DEFENDANT: What can I say. Good afternoon.

13           THE COURT: Good afternoon, sir.

14           THE DEFENDANT: I want to thank my family for showing  
15 up for me today. I appreciate that, and I love each and every  
16 one of them, and I'm sorry for them having to go through this,  
17 what I'm going through right now, 'cause they going through it  
18 with me too.

19           Your Honor, I'm a changed person. I've been a changed  
20 person for the last four to five years. Ever since my  
21 grandmother passed, I've been on the right path. Yes, I made  
22 stupid decisions that got me in here, but deep down, I am a  
23 changed person.

24           And that's all I got to say.

25           THE COURT: Okay. Thank you very much.

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1           Mr. Hudson, when I sentence someone, I do not come on  
2 the bench with a decision in mind because it is very important  
3 for me to keep an open mind until I've heard from everyone, and  
4 I've now heard from you. I'm going to gather together the  
5 notes that I've taken today and the notes that I took on the  
6 written submissions, and I'm going to step off the bench for  
7 about five or ten minutes, and then I'll come back with a  
8 sentence. I just want to make clear that it is not my  
9 intention to intensify any anxiety you might have; it's just to  
10 me the fairest way of addressing this. So I'm going to ask for  
11 your patience while I do what I need to do, and I'm going to  
12 ask the Marshals if they would please permit you to speak with  
13 your family members, since they've come here to see you today.

14           I'll be back when I can. Thank you very much.

15           THE DEPUTY CLERK: All rise.

16           (Recess)

17           (In open court)

18           THE COURT: Thank you very much, and please be seated.

19           I will describe the sentence that I now intend to  
20 impose, but I will give the attorneys an opportunity to make  
21 legal objections before I actually impose the sentence.

22           Before I do that, I want to just extend my  
23 appreciation to a couple of different groups of people today.  
24 My thanks to the attorneys who have given me a lot to think  
25 about in both the written submissions and the oral

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1 presentations today, and my thanks as well to the family  
2 members who have come to show their support for Mr. Hudson.  
3 Some of you have written to me, and your writings have given me  
4 a different perspective, one that I wouldn't get from a rap  
5 sheet or from the conduct in this case, so I appreciate that,  
6 and I'm sure that Mr. Hudson is aware of your devotion to and  
7 appreciation of him, and I'm sure he appreciates that as well.  
8 So I wanted to thank you for coming here today.

9           So as I said, I really appreciated the statements made  
10 by counsel because I think they both have some very valid  
11 points, and I'll talk about them in just a minute. But I want  
12 to begin by noting the factors that I have to consider under  
13 Section 3553(a) in imposing a sentence. And not all of these  
14 have equal relevance, so I'll just mention the ones I have  
15 focused on the most: The nature and circumstances of the  
16 offense; the history and characteristics of the defendant; the  
17 need for the sentence imposed to reflect the seriousness of the  
18 offense, to promote respect for the law, to provide a just  
19 punishment for the offense, to afford adequate deterrence to  
20 criminal conduct, to protect the public from further crimes by  
21 Mr. Hudson, to provide him with needed educational and  
22 vocational training, medical care, or other correctional  
23 treatment in the most effective manner; I must consider the  
24 Sentencing Guidelines, and I will speak about them momentarily;  
25 and I must consider the need to avoid unwarranted sentence

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1 disparities amongst similarly situated defendants.

2 My guidelines calculations replicate those in the  
3 presentence investigation report. There is a base offense  
4 level of 28; under guidelines Section 2D1.1, a three-level  
5 reduction for acceptance of responsibility, and an adjusted  
6 offense level of 25. Mr. Hudson has four criminal history  
7 points, yielding a criminal history category of III, and a  
8 resulting guidelines range of 70 to 87 months.

9 I've been asked by the defense to focus on the  
10 parsimony provision, which I do, because it is there, and it  
11 requires me to impose a sentence that is sufficient but not  
12 greater than necessary to comport with certain sentencing  
13 factors that are set forth.

14 I also, though, need to step back and consider the  
15 factors themselves, and I've done that, and I've focused on  
16 some in particular, including the seriousness of the offense  
17 and the history and characteristics of Mr. Hudson, the need for  
18 deterrence, and, in this case, because both sides have argued  
19 it to me, the need to avoid unwarranted sentence disparities  
20 amongst similarly situated defendants.

21 I've been asked to compare, or contrast, Mr. Hudson's  
22 background with that of Mr. Padilla, who received 66 months  
23 from me. As it happens, they have the same guidelines range,  
24 with one having a higher amount of product and the other having  
25 a greater criminal history category. Both are subject to the

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1 same mandatory minimum. It matters to me certain ways in which  
2 the two differ. Mr. Hudson has a greater criminal history  
3 category. He has more violence in his background. There is  
4 the use of a gun, and there is a concern about violence from  
5 that. I'm also a little bit concerned about some of his  
6 statements to me today. Mr. Hudson indicated that he had  
7 changed in the last five years, but based on my understanding  
8 of what's in the presentence investigation report, he was  
9 engaged in this conduct during that period of time. I hope,  
10 and Mr. Moskowitz wants to assure me, that Mr. Hudson has  
11 learned from this experience and that he is not going to repeat  
12 past mistakes. I hope that's the case.

13 But given that he has a slightly different and a  
14 slightly more violent criminal history category, I'm imposing a  
15 term of 68 months' imprisonment. I'm varying downward, but  
16 just slightly, because I do think, having sentenced  
17 Mr. Padilla, he has a different and a more troubling background  
18 than Mr. Padilla.

19 And I'm ordering that the term of imprisonment be  
20 followed by a term of supervised release of four years, with  
21 the mandatory, standard, and special conditions of supervised  
22 release.

23 I am not imposing a fine or restitution or forfeiture,  
24 but I am obligated to impose a \$100 mandatory special  
25 assessment.

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1           Mr. Balsamello, is there any reason why I may not  
2 impose this sentence?

3           MR. BALSAMELLO: No, your Honor.

4           THE COURT: Mr. Moskowitz, is there any reason why I  
5 may not impose this sentence?

6           MR. MOSKOWITZ: No, your Honor.

7           THE COURT: Thank you.

8           Mr. Hudson, please rise.

9           Mr. Hudson, after considering all of the factors set  
10 forth in Section 3553(a) of Title 18 of the United States Code,  
11 I find that a term of 68 months' imprisonment is sufficient but  
12 no greater than necessary to comport with all of the purposes  
13 of sentencing.

14           I will order that that term of imprisonment be  
15 followed by the mandatory minimum term of four years of  
16 supervised release, with the mandatory, standard, and special  
17 conditions that are outlined in the presentence investigation  
18 report.

19           I am not imposing a fine or restitution or forfeiture,  
20 but I must impose a \$100 mandatory special assessment.

21           Do you understand that, sir?

22           THE DEFENDANT: Yes.

23           THE COURT: Please be seated, sir.

24           Mr. Moskowitz, there was a request for the RDAP  
25 program. I will certainly make that recommendation.



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1 Does your client have a requested place of  
2 designation?

3 MR. MOSKOWITZ: Just within the northeast region, as  
4 close to New York as possible. As you can see, there is family  
5 that would like to visit, and the closer the better. So I  
6 guess it's a facility within the region that has RDAP.

7 THE COURT: That is in fact the recommendation we will  
8 make. We'll have it as close to the New York City metropolitan  
9 area as possible.

10 Mr. Moskowitz, are there any additional  
11 recommendations you would like me to make for your client?

12 MR. MOSKOWITZ: No, your Honor. Thank you.

13 THE COURT: Thank you.

14 Mr. Balsamello, are there any underlying charging  
15 instruments as to which you seek dismissal?

16 MR. BALSAMELLO: I don't believe that there are. If  
17 there are, I move to dismiss them, but I don't believe there  
18 are.

19 THE COURT: I don't believe there are.

20 Mr. Moskowitz, are you aware of any underlying  
21 charging instruments with respect to your client?

22 MR. MOSKOWITZ: No, your Honor.

23 THE COURT: All right, then. I don't want to have  
24 then a nullity of dismissing things that aren't there, so I  
25 won't do that.

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1           Mr. Balsamello, is there anything else from the  
2 government's perspective that you would like to bring up at  
3 this proceeding?

4           MR. BALSAMELLO: No, your Honor. Thank you.

5           THE COURT: All right. Thank you.

6           Let me please advise Mr. Hudson of this. Mr. Hudson,  
7 to the extent that you have not waived this in any plea  
8 agreement that you may have with the government, you have the  
9 right to appeal from your conviction and from your sentence.  
10 If appeal is something that you're interested in, please speak  
11 with Mr. Moskowitz at your earliest opportunity. Generally  
12 speaking, you have two weeks from the date that the written  
13 judgment of conviction is entered in order to file a notice of  
14 appeal. It's my expectation that the written judgment of  
15 conviction will be entered probably tomorrow. I don't think it  
16 will get in today, and I hope to have it done tomorrow. So  
17 from there, I'll imagine you have two weeks to decide what you  
18 wish to do. If you're interested at all in the process of  
19 appeal, please speak with Mr. Moskowitz as soon as you can. He  
20 is familiar with the process, and he can explain to you the  
21 first steps that you would need to take. Do you understand,  
22 sir?

23           THE DEFENDANT: Yes.

24           THE COURT: All right. Mr. Moskowitz, is there  
25 anything else you wish to bring to my attention on behalf of

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1 your client?

2 MR. MOSKOWITZ: Not at this time, your Honor. Thank  
3 you.

4 THE COURT: All right. Thank you very much.

5 Mr. Hudson, you were very, very well served by your  
6 counsel, and he did a lot to make me see the many ways in which  
7 you're trying to change your life. Today, before me, and  
8 before your family and loved ones, you also committed to  
9 changing your life and to taking a different path than that  
10 which you've taken in the past. I'm sure that you will do that  
11 when you leave, but I'm sure that you will remember and always  
12 be a credit to the woman who raised you and who you still  
13 treasure so deeply in your heart. I will simply tell you, sir,  
14 it's my hope that you and I not see each other in this context  
15 again. That will mean you will have violated your conditions  
16 of supervised release, and I don't -- well, I can imagine you  
17 don't want to see me in this context again, and I will take no  
18 offense if that's the case. But my hope is that while you are  
19 incarcerated, you make use of whatever programs the BOP offers  
20 in your place of designation to better yourself, to get the  
21 experience that you want, to get the GED that I agree will help  
22 you out so much in your life, and that you leave prison with a  
23 renewed hope and focus, and I wish you well in that regard,  
24 sir.

25 THE DEFENDANT: Thank you.

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1           THE COURT: All right. Thank you very much. We're  
2 adjourned.

3           THE DEPUTY CLERK: All rise.

4                   Ooo,